

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST SAXON,

Plaintiff,

DECISION AND ORDER

05-CV-6336L

v.

SUPERINTENDENT JAMES T. CONWAY,
et al.,

Defendants.

Plaintiff, Ernest Saxon, has moved for summary judgment on his claim alleging denial of medical care in this *pro se* prisoner civil rights action under 42 U.S.C. § 1983.


Plaintiff's motion is denied. From the face of the complaint and plaintiff's motion papers, it is obvious that there are genuine issues of material fact concerning plaintiff's allegations that the defendant physicians failed to provide him with adequate medical care, and also concerning whether they acted with a culpable state of mind. Plaintiff is therefore not entitled to summary judgment. *See Copenhaver v. Hammer*, No. 1:05-CV-675, 2007 WL 2406957, at *2 (W.D.Mich. Aug. 20, 2007) ("Plaintiff has only succeeded in showing there are genuine issues of material fact as to whether his medical needs were serious and whether Defendant Merlau possessed a culpable state of mind"); *Lenz v. Montgomery*, No. 4:02CV00450, 2007 WL 990267, at *3 (E.D.Ark. Mar. 29,

2007) (“Issues of material fact remain for both the objective and subjective elements required to establish deliberate indifference to serious medical needs; therefore, summary judgment is inappropriate”).

CONCLUSION

Plaintiff’s motion for partial summary judgment (Dkt. #22) is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 5, 2007.